

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

LUISITO BARBA and JOEL BARBA,

Plaintiffs,

v.

**A NEW CENTURY CHINESE BUFFET
INC., FRANK ZHENG, A NEW
CENTURY CHINESE RESTAURANT,
INC., XIU LAN XIAO, jointly and
severally,**

Defendants.

Case No.: 2:20-cv-01557-MRH

MOTION FOR LEAVE TO FILE SECOND AMENDED COMPLAINT

AND NOW, comes Plaintiffs, Luisito Barba and Joel Barba, by and through the undersigned counsel, J.P. Ward & Associates, LLC. and, specifically, Joshua P. Ward, Esquire, who file the within Motion for Leave to File Second Amended Complaint, of which the following is a statement:

1. On October 15, 2020, Plaintiffs Luisito Barba and Joel Barba (“Plaintiffs”) filed a Complaint in Civil Action against Defendants New Century Chinese Buffet, Inc., Bi Quan You, and Frank Zheng in the United States District Court of Western Pennsylvania. *See* ECF 1.

2. Plaintiffs effectuated service of Complaint and Summons to Defendants on November 3, 2020 and filed a Return of Service Returned Executed on November 9, 2020. *See* ECF 6.

3. On December 23, 2020, Defendants New Century Chinese Buffet, Inc. and Frank Zheng filed an answer to the Complaint. *See* ECF 12.

4. On January 28, 2021, Plaintiffs filed the First Amended Complaint against New Century Chinese Buffet, Inc., Bi Quan You, Frank Zheng, A New Century Chinese Restaurant, Inc., and Xiu Lan Xiao was filed. *See* ECF 23.

5. On February 11, 2021, Defendants, New Century Chinese Buffet, A New Century Chinese Restaurant, Inc., Xiu Lan Xiao, and Frank Zheng, filed an answer to the Amended Complaint. *See* ECF 30.

6. On April 9, 2021, an Order to Show Cause as to why Defendant Bi Quan You should not be dismissed for failure to prosecute was entered. *See* ECF 35.

7. Plaintiffs now seek to amend the pleading to remove Bi Quan You as a Defendant.

8. Pursuant to Rule 15(a)(2), “a party may amend its pleading only with the opposing party's written consent or the court's leave.” Fed. R. Civ. P. 15(a)(2).

9. Attached to this motion is Exhibit A, Plaintiff's Second Amended Complaint.

WHEREFORE, Plaintiffs, Luisito Barba and Joel Barba, respectfully request that this Honorable Court enter the attached proposed Order of Court, granting Plaintiff leave to file its Second Amended Complaint.

Respectfully Submitted,

J.P. WARD & ASSOCIATES, LLC.

Date: April 12, 2021

By: 

Joshua P. Ward (Pa. I.D. No. 320347)

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